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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,341	03/27/2002	Bernhard Rieger	CM2210MQL	1289

27752 7590 03/26/2003

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EXAMINER

RABAGO, ROBERTO

ART UNIT

PAPER NUMBER

1713

DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,341	Applicant(s) RIEGER ET AL.	
	Examiner Rob Rábago	Art Unit 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the following reasons.

(a) Claims 2, 4, 5 and 6 are inconsistent with the parent claim because claim 1 is not generically directed to an article, but rather to a fibrous web material. If these claims are intended to recite an article comprising the fibrous web material of claim 1, then the preamble should be drafted as in claim 3.

(b) Claim 6 recites the limitation "said first element" in line 3. There is insufficient antecedent basis for this limitation in the claim.

(c) Claim 9 recites the limitation "said step of combining fibers" in line 3. There is insufficient antecedent basis for this limitation in the claim.

(d) In claim 10, the significance of the word "step" in line 3 is not understood.

(e) Claims 1-11 are indefinite in that the meaning of "polyolefinic homopolymer" is not understood with respect to the polymer components of the fiber. Specifically, it cannot be determined whether the fiber may contain a polymer component in addition to the specified polyolefinic homopolymer. While the definition stated at page 3, lines 17-

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22, appears to preclude fibers comprising certain blended polymers, the specification describes at pages 7-8 numerous advantageous uses of a second blending polymer in the fiber. The scope of "polyolefinic homopolymer" is furthermore not understood with respect to the blended/unblended issue because the scope of "one phase of molecules" which is used in the definition of "polyolefinic homopolymer" is not understood. The single negative example provided (i.e., that in-situ produced atactic/isotactic polymer blends are excluded) is insufficient to understand the scope and implication of the phrase "one phase of molecules".

Claim Rejections - 35 USC § 102 and/or 103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 7-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sawyer et al. (US 5,672,415).

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The reference discloses in Example 1 a through air bonded spunbond fiber formed into a web using the apparatus described in Figure 1, wherein the fiber comprises a polypropylene component and a polyethylene component. The polyethylene component has an inherent isotacticity of zero, but the tacticity of polypropylene has not been disclosed. However, the polypropylene component most likely has an isotacticity of less than 60% because all but one of the polypropylenes disclosed at col. 4, lines 33, would inherently have an isotacticity of less than 60% (i.e., syndiotactic polypropylene, elastomeric homopolymer polypropylene, and propylene copolymers).

In the alternative, if the cited example has used a polypropylene with greater than 60% isotacticity, one of ordinary skill in the art would be motivated to use syndiotactic polypropylene, elastomeric homopolymer polypropylene or a propylene copolymer because patentee has suggested such use, with reasonable success expected.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer et al. (US 5,672,415).

The parent claims are discussed with respect to this reference above. The only elements missing from the previously cited disclosure is the use of the fibrous web as a hygienic or absorbent disposable article. However, one of ordinary skill in the art would be motivated to use the disclosed web in these applications because such use is suggested at col. 7, lines 38-44, with reasonable success expected.

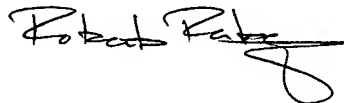
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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (703) 308-4347. The examiner can normally be reached on Monday - Friday from 7:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached at (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Rob Rábago
Examiner
Art Unit 1713



RR
March 18, 2003